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CITATIONS

295621—41——1

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 616

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEAMON RESLER, AND LEAMON RESLER DOING BUSINESS AS RESLER TRUCK LINE AND AS BRADY TRUCK LINE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court filed no written opinion.

JURISDICTION

The order of the District Court sustaining the motion to quash the information was entered September 20, 1940 (R. 11). The appeal to this Court was applied for and allowed on October 18, 1940 (R. 11–13). The jurisdiction of this Court to review by direct appeal the judgment here complained of is conferred by the Act of March 2, 1907,

c. 2564, 34 Stat. 1246 (18 U. S. C., Sec. 682), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 345). An order was entered by this Court on January 6, 1941, noting probable jurisdiction.

STATUTE INVOLVED

The statute involved is the Motor Carrier Act, 1935 (c. 498, 49 Stat. 543–567, 49 U. S. C. Supp. V, Secs. 301–327). The pertinent provisions are contained in Sections 212 and 213, which are set forth in Appendix A, *infra*, pp. 19–24.

QUESTION PRESENTED

Whether the transfer of a certificate of public convenience and necessity issued under the Motor Carrier Act, 1935, is subject to the conditions specified in Section 212 (b) of that statute unqualified by Section 213 (e), where less than 20 vehicles are involved.

STATEMENT

On July 25, 1940, an information in 13 counts was filed against appellee in the United States District Court for the District of Colorado (R. 1–9). The first 12 counts charged that at various times between April 15, 1939, and August 28, 1939, appellee, doing business as Resler Truck Line and as Brady Truck Line, unlawfully engaged in interstate operation as a common carrier by motor vehicle by transporting for hire, from Denver to Fort Collins, Colorado, property then moving in inter-

state commerce, without having secured from the Interstate Commerce Commission a certificate of public convenience and necessity authorizing such interstate operation, in violation of Section 206 (a) of the Motor Carrier Act, 1935, as amended (49 U. S. C. Supp. V, Sec. 306 (a)). The 13th count of the information related to an alleged violation over another highway route and is not involved on this appeal.

Appellee appeared and filed an unverified pleading denominated "Motion to quash information" (R. 10), which recited the following facts: On April 11, 1939, "in compliance with the rules and regulations of the Interstate Commerce Commission,"[1] appellee transmitted to the Commission an application to transfer to himself the operating rights of one C. J. Brady, doing business as Brady Truck Line, which the Commission had theretofore issued to the said Brady and which included authorization to engage in interstate commerce between Denver and Fort Collins, Colorado. That application was on file with the Commission during the period covered by the information.[2] Throughout that period appellee neither owned nor operated twenty motor vehicles, and there were involved in the transfer not more than twenty motor vehicles,

[1] These rules are set forth in Appendix B, *infra*, pp. 24–30.

[2] By stipulations it appears that appellee's application was filed with the Commission on April 14, 1939; that it was never approved by the Commission; and that it was dismissed by the Commission on October 17, 1939, at appellee's request (R. 14–15, 17).

as defined by Section 213 (e) of the Motor Carrier Act. Appellee's defense, predicated on the foregoing facts, was (R. 10):

> That defendant having acquired the rights of C. J. Brady to operate in interstate commerce between Denver, Colorado, and Fort Collins, Colorado, was not in violation of Section 206 (a) of the Motor Carrier Act, 1935, as amended; that the Interstate Commerce Commission is without jurisdiction, under the provisions of Section 213 (e), to approve or disapprove a transfer where the total number of motor vehicles involved is not more than twenty (20).

The motion to quash raised no question as to the sufficiency of the information as a pleading, and at the argument was orally amended so as to apply only to the first twelve counts of the information (R. 13, 14). On September 20, 1940, the District Court, after argument, granted, as to counts one to twelve, inclusive, of the information, appellee's so-called motion to quash. On October 18, 1940, an appeal was allowed to this Court (R. 12-13).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In granting the special plea in bar, denominated a motion to quash, filed by appellee.

2. In holding that there was in force with respect to appellee a certificate of public convenience and necessity, or its equivalent, authorizing him to engage in interstate operations on the public highways

between Denver and Fort Collins, Colorado, as a common carrier by motor vehicle:.

3. In holding that the provisions of Section 213 (e) of the Act exempt from the provisions of Section 212 (b) of the Act transfers of certificates of public convenience and necessity where not more than 20 vehicles are involved.

4. In failing to apply the rules and regulations promulgated by the Interstate Commerce Commission July 1, 1938, effective September 1, 1938, under Section 212 (b) of the Act and covering transfers of rights to operate as a motor carrier in interstate and foreign commerce.

SUMMARY OF ARGUMENT

Sections 212 (b) and 213 of the Motor Carrier Act, 1935, together constitute a comprehensive scheme for the regulation of transfers of certificates of public convenience and necessity. The basic provisions are contained in Section 212 (b) which permits the transfer of any certificate in accordance with such rules and regulations as the Commission may prescribe. In the case of mergers or similar combinations, the right to transfer a certificate conferred by Section 212 (b) is subject to further and more exacting conditions set forth in detail in Section 213. But Section 213 (e) removes from its scope transfers involving 20 vehicles or less. Accordingly, such transfers remain subject to the general provisions of Section 212 (b), unaffected by the more detailed requirements of Section 213.

The interpretation of the statute urged by the appellee ignores the comprehensive scheme of regulation which is established by Sections 212 and 213, and would seriously impede the effective administration of the law by the Commission. Although the Commission can and does exact compliance with various conditions prior to the granting of a certificate of public convenience and necessity in the first instance, its efforts could be nullified by a transfer of the certificate unless the transfer were subject to its approval.

ARGUMENT

THE DISTRICT COURT, IN SUSTAINING APPELLEE'S MOTION TO QUASH THE INFORMATION, ERRONEOUSLY CONSTRUED SECTION 213 (e) AS MODIFYING SECTION 212 (b) OF THE MOTOR CARRIER ACT, 1935

This is a case of first impression presenting for decision a question of importance in the administration of the Motor Carrier Act.[3] No factual issues or procedural questions[4] are presented.

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[3] The same question will arise under the Transportation Act of 1940. Section 213 of the Motor Carrier Act was repealed by the new Act but the provisions involved on this appeal were reenacted in Section 7 of the latter law.

[4] The Government raised no objection to the fact that appellee's pleading was denominated a motion to quash when, actually, it was a special plea in bar, and the district judge treated it as such (R. 12–13).

The sole problem is whether, as a matter of law, the court below correctly construed Sections 212 (b) and 213 (e) of the Act.

The Motor Carrier Act establishes a comprehensive scheme for the regulation of all interstate common carriers by motor vehicle under the administration of the Interstate Commerce Commission. Regulation is initiated and made effective by the familiar and traditional method of requiring all such carriers to secure from the Commission a certificate of public convenience and necessity as a condition of engaging in business (Sec. 206 (a)). Criminal penalties are imposed for operation without a certificate (Sec. 222).

In this case the gist of the offense charged was operation as a common carrier without a certificate. The court sustained the so-called motion to quash in which the appellee relied solely upon the contention that he had obtained a certificate by a transfer which, under Section 213 (e), was not subject to approval by the Commission. Since appellee did not contend that he had either acquired a certificate from the Commission or secured one by transfer approved by it, the court must have concluded that under Section 213 (e) the appellee could validly acquire a certificate by transfer without obtaining the approval of the Commission. This construction completely fails to give effect to the obvious purpose of Section 212 (b).

A. TRANSFERS OF CERTIFICATES ARE AUTHORIZED ONLY BY SECTION 212 (B) AND MUST BE MADE EITHER PURSUANT TO THE PROCEDURE THEREIN PRESCRIBED OR IN ACCORDANCE WITH THE PROCEDURE PROVIDED IN 213

Section 212 of the Act defines the Commission's powers with respect to existing certificates. Section 212 (a) is a complete and self-contained description of the only authority granted in the Act to the Commission to alter, amend, or revoke any certificate. It gives the Commission discretionary power to amend any certificate on application of the holder and also authorizes the Commission to suspend, change, or revoke a certificate of any holder who willfully fails to comply with the Act, the rules and regulations promulgated thereunder, or the terms and conditions of the certificate. Section 212 (b) is a general grant to the Commission of authority to prescribe conditions under which certificates may be transferred and is the sole source of any right to transfer such certificates. It provides that—

> Except as provided in section 213, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

Section 212 thus discloses a clear and unequivocal intent to vest in the Commission complete regulatory jurisdiction over the suspension, revocation, amendment, and transfer of certificates. Para-

graph (b) of that section requires all transfers to be made in conformity with such rules and regulations as the Commission may prescribe except in so far as a different procedure for accomplishing the transfer is prescribed in Section 213.[5]

No claim is made that the transfer here involved was subject to the procedure prescribed in Section 213. Paragraph (a) of that section prohibits

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[5] Appellee, in his motion to quash, did not contend that he had complied with Section 212 (b) or with the rules and regulations issued under it. It appears that the appellee filed an application for a transfer with the Commission, that the application was pending during the period of time covered by the information (R. 14–15), but that the application was withdrawn at the request of appellee (R. 17). If this was an attempt to comply with the rules and regulations of the Commission regarding transfer under Section 212 (b), it was a failure, since regulation 1 (d) of the Rules and Regulations promulgated by the Interstate Commerce Commission covering transfer of rights to operate as a motor carrier in interstate or foreign commerce expressly provides "No attempted transfer of any operating right shall be effective except upon full compliance with these rules and regulations and until after the Interstate Commerce Commission has approved such transfer as herein provided (except as provided in Rule 7 (a))." Rule 7 (a) has no application to the present case because it merely permits transfer of intrastate certificates where the approval of the appropriate state authority has been secured and notice given to the Interstate Commerce Commission. It is not disputed in this case that the Commission has never given approval to the transfer here in question (R. 14–15).

The Commission's Rules and Regulations were published in the Federal Register, Vol. III, No. 173, pp. 2157–2158, September 3, 1938, and Vol. III, No. 174, p. 2180, September 7, 1938.

mergers, consolidations, or acquisitions of control which bring the businesses of two motor carriers, or the business of a motor carrier and a carrier by rail, express, or water under a single control unless approved by the Commission. It establishes the procedure to be followed in securing the Commission's approval. The Commission must hold a formal hearing after notice has been given to all interested parties, including the Governor of each state in which any of the operations of the carriers involved occur. Approval may be granted only if the Commission finds that the proposed transaction will be consistent with the public interest. Paragraphs (b), (c), and (d) are designed to implement and make effective the Commission's authority. The only combinations or acquisitions permitted without compliance with the procedure and conditions prescribed are those involving not more than 20 vehicles. This exemption is contained in paragraph (e) which provides as follows:

> Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

Section 213 is not an affirmative authorization for the transfer of certificates. It merely prescribes the procedure which must be followed in securing the Commission's approval for certain transactions. To the extent that any transfer is not governed by the procedure prescribed by Section 213, it remains subject to the basic provisions in Section 212 (b). And since Section 213 (e) eliminates transfers involving 20 vehicles or less from the scope of Section 213, such transfers obviously remain subject to Section 212 (b), unaffected by Section 213.

Subsection (e) of Section 213 is nothing more than an explicit direction that the Commission shall not consider mergers or combinations of two or more motor carriers, which involve 20 vehicles or less, as being included in the classes of transactions dealt with by Section 213. Exactly the same result could have been achieved by affirmatively defining each type of transaction which could be consummated only with the Commission's approval secured in the manner prescribed in Section 213 (a). If Congress had employed that cumbersome method of draftsmanship, this controversy would not have arisen. That it chose instead to adopt a simpler form of definition does not alter the purpose sought to be accomplished.

Obviously, that purpose was to permit the Commission, in exercise of the discretion vested in it by Section 212 (b), to relieve small trucking con-

cerns of the expense and difficulty of securing administrative approval through the more exacting procedure established by Section 213, and to relieve the Commission of the burden of hearing proceedings in respect to every transfer, however small the number of vehicles affected and however insignificant the effect upon the general transportation system. All other transactions were deemed by Congress to be sufficiently important from the standpoint of protecting the public against transportation monopolies and of assuring adequate competition, to require that Commission approval be granted only after affording all interested parties including representatives of the public an opportunity to be heard.*

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*In explaining Section 213 on the floor of the Senate, Senator Wheeler, Chairman of the Senate Committee which reported out the bill, said (79 Cong. Rec. 5654–5655):

"Section 213, page 35. Consolidation, merger, and acquisition of control: At present most truck operations are small enterprises. However, there are many rumors of plans for the merging of existing operations into sizeable systems. In view of past experiences with railroad and public utility unifications, it is regarded as necessary that the Commission have control over such developments, *where the number of vehicles is sufficient to make the matter one of more than local importance.* This section, therefore, confers on the Commission jurisdiction over all consolidations, mergers, purchases, leases, operating agreements, and acquisitions of control through stock ownership where two or more motor carriers are involved or where a person other than a motor carrier undertakes to acquire control through stock ownership of two or more motor carriers, and prohibits all other forms of unification. An amendment made by the committee makes this jurisdiction applicable, except in the case of

From the foregoing discussion, it is apparent that Section 212 (b) and Section 213 deal with separate and distinct problems. Section 212 (b) is a regulatory provision designed to vest in the Commission control over any change in the status of a certificate of public convenience and necessity. In contrast, Section 213 is designed to safeguard the public against monopolistic control by requiring the Commission to expose proposed mergers to the light of public hearings. By introducing Section 212 (b) with the phrase "Except as provided in Section 213," Congress has not evinced an intent to exclude certain transfers of certificates from regulation by the Commission. Instead, Congress has obviated the possibility of Section 212 (b) be-

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rail, express, or water carrier affiliations, only where the total number of vehicles involved is more than 20 (subpar. (e), p. 39.)

"In other words, we eliminated from this provision such a case, for example, as that of two small operators who might want to get together and we made it apply only to cases where they had more than 20 vehicles, so that the small operators could get together without the necessity of going through a great deal of red tape with the Commission" (Italics supplied).

Mr. Sadowski, a member of the subcommittee which considered the Motor Carrier Act in the House, stated on the floor (79 Cong. Rec. 12206):

"I will say in this respect that it is the intent, and it is important to the welfare and progress of the motor-carrier industry that the acquisition of control of the carriers be regulated by the Commission so that the control does not get into the hands of other competing forms of transportation, who might use the control as a means to strangle, curtail, or hinder progress in highway transportation for the benefit of the other competing transportation."

ing construed in a manner which would defeat the purpose of Section 213 by affirmatively declaring that no transaction governed by Section 213 may be consummated in the less formal method prescribed in Section 212 (b). But in making certain that Section 213 would not be misconstrued, there is no evidence that Congress intended to create an hiatus in the Commission's jurisdiction over transfers of certificates. Thus the rigorous procedure required by Section 213 (a) covers a limited class of transfers while all others are governed by the regulations of the Commission promulgated under Section 212 (b). Consequently, transactions, such as those described in Section 213 (e), which are not required to be approved in the manner prescribed by Section 213 (a) are left within the express terms of Section 212 (b).

B. THE CONSTRUCTION ADOPTED BY THE COURT BELOW IS INCONSISTENT WITH THE STATUTORY SCHEME OF REGULATION

The Motor Carrier Act, 1935, established a comprehensive scheme for the regulation of common carriers by motor vehicle. The Act imposed upon the Commission the general duty to regulate such common carriers and to that end authorized it to establish reasonable requirements with respect to service, uniform accounts, record, qualifications, and maximum hours for employees and safety of operation and equipment (Sec. 204 (1)). Operation of common carriers by motor vehicles is pro-

hibited "unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations" (Sec. 206 (a)), and the manner of securing such a certificate is prescribed. Before granting any certificate the Commission must find that the applicant is fit, willing, and able to perform the services described in the application and that the proposed service is or will be required by the public convenience and necessity (Sec. 207 (a)).

All certificates must specify the service to be rendered, the termini and intermediate points or the territory to be served and such other reasonable terms, conditions, and limitations as the public interest requires (Sec. 208). As pointed out above, the suspension, revocation, amendment, and transfer of certificates are covered by Section 212. The Commission may authorize mergers and such mergers are relieved from the prohibitions of the anti-trust laws (Sec. 213 (f)). The issuance of securities (Sec. 214), the posting of surety bonds (Sec. 215), the rates and charges (Sec. 216), and the filing of tariffs (Sec. 217) are all subject to regulation by the Commission. In order to make such regulation effective the Commission may require reports to be filed (Sec. 220).

By the foregoing provisions Congress has sought to vest in the Commission complete regulatory authority over the operations of common carriers by motor vehicle. However, if the decision below

should be affirmed, the way is left open for holders of certificates to extend their operations without reference to the Commission by the simple device of purchasing a certificate from another holder.

It seems highly improbable that Congress intended to leave so great a gap in the Commission's power to regulate in view of the otherwise complete regulation provided by the Act. The Act does not require that result and it can only be reached by reading Section 213 "without the illumination of the scheme and purposes" of the Motor Carrier Act. Cf. concurring opinion in *L. Singer & Sons* v. *Union Pac. R. Co.*, No. 34, present Term.

Furthermore, if the lower court was correct the effective administration of the Act will be impossible. In order to perform adequately its duties under the Act the Commission must exercise close and continuous supervision over the filing of tariffs, compliance with safety regulations, filing of insurance policies, and similar matters. If the Commission has not even the power to secure notice of transfers involving 20 vehicles or less then it cannot exercise such supervision. Certificates of public convenience and necessity will become as difficult to trace as negotiable instruments. The Commission will be unable to ascertain the carriers subject to its regulation without undertaking burdensome investigations.

The extent of the administrative chaos which would result from this interpretation is apparent

from the fact that the overwhelming majority of all motor carriers operate less than ten vehicles.[7] If so large a number of carriers are permitted to transfer certificates freely among themselves the purposes of the Act will be defeated and its administration will be rendered impracticable. It is well established that a statute will not be construed to yield an absurd and impracticable result. The principle has been applied even where it required deviation from the literal language of the statute. *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, 458, 459; *United States* v. *Lacher,* 134 U. S. 624, 626, 628; *Silver* v. *Ladd,* 7 Wall. 219, 225–226; *United States* v. *Katz,* 271 U. S. 354, 357; *Sorrells* v. *United States,* 287 U. S. 435, 446–448; *Ash Sheep Co.* v. *United States,* 252 U. S. 159, 169–170. But since the literal language of the statute in this case yields a result that is consistent with the legislative purpose, it follows *a fortiori* that that purpose should be given effect.

[7] In 1935, the year that the statute was enacted, 61,216 concerns were engaged in operating motor carrier businesses. This included both intrastate and interstate operations. Of this number 58,305, or approximately 95% operated less than ten vehicles. The large number of small units in this industry is apparent from the fact that 40,093, or 65% of the total, operated only a single vehicle. Approximately 80% of those classified as interstate operators operated less than ten vehicles, and it should be noted that this category did not include all carriers subject to the Act. United States Department of Commerce, Census of Business 1935—*Motor Trucking for Hire*, page 63, table No. 5.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

FRANCIS BIDDLE,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
JAMES C. WILSON,
FOWLER HAMILTON,
S. R. BRITTINGHAM, Jr.,
Special Assistants to the Attorney General.

FEBRUARY 1941.

APPENDIX A

MOTOR CARRIER ACT, 1935 (c. 498, 49 STAT. 543; 49 U. S. C., SUPP. V., SEC. 312)

SUSPENSION, CHANGE, REVOCATION, AND TRANSFER OF CERTIFICATES, PERMITS, AND LICENSES

SEC. 212. (a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than ninety days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204 (d), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit,

or license, found by the Commission to have been violated by such holder.

(b) Except as provided in section 213, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL

SEC. 213. (a) It shall be lawful, under the conditions specified below, but under no other conditions, for two or more motor carriers which are not also carriers by railroad to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and/or operation of the properties theretofore in separate ownership; or for any such motor carrier or two or more such carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another such carrier; or for any such motor carrier or two or more such carriers jointly, to acquire control of another such carrier through purchase of its stock; or for a person which is not a motor carrier or a carrier by railroad, or express, or water to acquire control of two or more motor carriers through ownership of their stock; or for any such person which has control of one or more motor carriers to acquire control of another such carrier through ownership of its stock; or for a carrier by railroad, express, or water to consolidate, or merge with, or acquire control of, any motor carrier or to purchase, lease, or contract to operate its properties, or any part thereof.

(1) Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of

control is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties or operations of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, and other parties known to have a substantial interest in the proceeding of the time and place for a public hearing. If after such hearing the Commission finds that the transaction proposed will be consistent with the public interest and that the conditions of this section have been or will be fulfilled, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided, however,* That if a carrier other than a motor carrier is an applicant, or any person which is controlled by such a carrier other than a motor carrier or affiliated therewith within the meaning of section 5 (8) of part I, the Commission shall not enter such an order unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than a motor carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(2) Whenever a person which is not a motor carrier is authorized, by an order entered under subparagraph (1) of this section, to acquire control of any such carrier or of two or more such

carriers, such person thereafter shall, to the extent provided by the Commission, for the purposes of section 204 (a) (1), and section 220 (a) and (b), relating to accounts, records, and reports, and to the inspection of facilities and records, including the penalties applicable in the case of violations thereof, be subject to the provisions of this part.

(b) (1) It shall be unlawful for any person, except as provided in paragraph (a), to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more motor carriers which are not also carriers by railroad, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this part and in violation of this paragraph. As used in this paragraph, the words "control or management" shall be construed to include the power to exercise control or management.

(2) The Commission is hereby authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (b) (1) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action consistent with the provisions of this part as may be necessary, in the opinion of

the Commission, to prevent further violation of such provisions.

(3) For the purposes of this section, wherever reference is made to control, it is immaterial whether such control is direct or indirect.

(c) The district courts of the United States shall have jurisdiction upon the application of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(d) The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraphs (a) or (b), as it may deem necessary or appropriate.

(e) Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

(f) The carriers and any person affected by any order made under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints, and monopolies, and for other purposes", approved Oc-

tober 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order.

APPENDIX B

Pursuant to section 212 (b) of the Motor Carrier Act, 1935, the Interstate Commerce Commission has issued the following rules and regulations:

RULE 1. *General.*—(a) As used herein, the term "transfer" shall include all transactions, not included within sections 210a (b) and 213[1] of said act, whether by pur-

[1] Section 213 (e) provides as follows:

Except where a carrier other than a motor carrier is an applicant or any person which is controlled by such a carrier or carriers by railroad or affiliated therewith within the meaning of section 5 (8) of part I, the provisions of this section requiring authority from the Commission for consolidation, merger, purchase, lease, operating contract, or acquisition of control shall not apply where the total number of motor vehicles involved is not more than twenty.

It, therefore, follows that, under certain circumstances, the transfer of operating rights is exempt from the provisions of section 213 if the total number of vehicles affected by the transaction, including those owned, operated or controlled by all of the parties is not more than 20. For example, if A, owning 10 vehicles, sells to B, owning 10 vehicles, the provisions of section 213 do not apply to the transaction. But if A, owning 11 vehicles, sells to B owning 10 vehicles, the provisions of section 213 apply, because the total number of vehicles involved is more than 20, and application for an order approving and authorizing the transaction must be made to this Commission and such authority obtained. For further example, if A, who operates 100 vehicles in his motor-carrier business, sells a portion of his operation to B, who operates 5 vehicles in his motor-carrier business, 5 vehi-

chase and sale, lease, contract to operate, or otherwise, whereby a right to operate as a motor carrier in interstate or foreign commerce arising out of the Motor Carrier Act, 1935, is transferred from one person to another. No transfer by means of an attempted pledge of any such rights or by any action purporting to foreclose a pledge upon or lien against any such rights, or by any attempt to levy execution against any such rights in satisfaction of any judgment or other claim against the holder thereof, shall be effective without compliance with these rules and regulations and the prior approval of the Commission as herein provided.

(b) The term "operating rights" as used herein includes the right to operate as a motor carrier in interstate or foreign commerce over a route or routes or within a specified territory, as authorized by the whole or any part of a certificate of public convenience and necessity or a permit issued by this Commission under the provisions of the Motor Carrier Act, 1935, or as authorized by those provisions of said act under which a motor carrier may continue operations pending consideration of its application to the Commission for a certificate or permit, or as recognized in the second proviso of section 206 (a) by reason of the holding of an intrastate certificate of public convenience and necessity. An operating right so recognized in the second proviso of section 206 (a) is hereinafter, for convenience, termed a "State operating right."

(c) For the purposes of transfer, operating rights may be divided as to routes or

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cles being operated in connection with the portion sold, the total number of vehicles involved would be 10, and the transaction would not be subject to the provisions of section 213.

territories, if such routes or territories are clearly severable and if the division thereof does not permit the creation of duplicate motor carrier operating rights. No division of operating rights based upon the class or classes of property authorized to be transported will be approved, unless it appears to the satisfaction of the Commission that the part of the operating rights sought to be transferred is, because of a difference in the nature or type of the service rendered, clearly distinguishable and severable from the remaining operating rights.

(d) No attempted transfer of any operating right shall be effective except upon full compliance with these rules and regulations and until after the Interstate Commerce Commission has approved such transfer as herein provided (except as provided in rule 7 (a)).

RULE 2. *Applications to Transfer, and Notifications.*—(a) Applications to transfer operating rights, and the notifications provided in rule 7 (a), shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information as the Commission shall prescribe.

(b) A verified original copy of any such application or notification and two additional copies thereof shall be filed with the Commission, and one copy thereof shall be delivered, in person or by mail, to the District Director or District Directors of the district or districts of the Bureau of Motor Carriers in which headquarters of each of the parties signing such application or notification is located, and one copy thereof to the Board, Commission, or official, (or to the Governor where there is no Board, Commission, or official), having authority to regu-

late the business of transportation by motor vehicle, of each State in which each of said parties operates. Proof of service of copies of the application or notification upon each of such persons shall be made in connection with and as a part of the original verified application or notification filed with the Commission.

(c) The transfer described in any such application shall be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transaction is one which is not subject to the provisions of section 213 of the Motor Carrier Act, 1935, and that the proposed transferee is fit, willing and able properly to perform the service authorized by the operating rights sought to be transferred, and to conform to the provisions of the Motor Carrier Act, 1935, and the requirements, rules and regulations of the Commission thereunder. Otherwise the application shall be denied.

RULE 3. *Transfers to fiduciaries.*—(a) The temporary continuance of motor carrier operations without prior compliance with the provisions of rule 2 hereof will be recognized as justified by the public interest in cases in which administrators or executors of deceased carriers, guardians of incapacitated carriers, a surviving partner or the surviving partners collectively of dissolved partnerships, or trustees, receivers, conservators, assignees or other such persons who are authorized by law to collect and preserve property of financially disabled carriers, desire to continue the operations of the carriers whom they succeed in interest.

(b) Immediately upon any such succession, and in any event not more than 10 days thereafter, the successor shall give notice of

the succession by a letter, properly enclosed in a stamped envelope, addressed to the Secretary of the Interstate Commerce Commission, Washington, D. C., stating the names of the motor carrier and of the successor, the date of the succession, the circumstances causing the succession, whether there has been any discontinuance of operations and, if so, for what period, and, if the representative capacity of the successor involves appointment by a judicial proceeding, a certified copy of such appointment.

(c) Successors under this rule may exercise the operating rights of the motor carrier whom they succeed so long as they act in a temporary and representative capacity or until the Commission shall otherwise order. All transfers by such successors to other persons shall be subject to all of the provisions of rule 2 of these rules and regulations.

(d) Successors as described by this rule shall operate in the name of the prior holder of the certificate, permit, or other operating right, followed also by the name of the successor and a designation of his capacity.[2] The use of such name on all papers filed in accordance with the Motor Carrier Act, 1935, or the rules and regulations prescribed thereunder, shall be sufficient compliance with any requirement, rule, or regulation

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[2] For example, if John Jones were a prior holder of a certificate or permit and if Richard Smith be the successor, the name used in the operation should be as follows:

John Jones, Richard Smith, Administrator; John Jones, Richard Smith, Executor; Jones & Smith, Richard Smith, Surviving partner; John Jones, Richard Smith, Guardian; John Jones, Richard Smith, Trustee; John Jones, Richard Smith, Receiver; John Jones, Richard Smith, Conservator; and John Jones, Richard Smith, Assignee.

that such papers be filed in the name of a holder of a certificate or permit.

RULE 4. *Leases and contracts to operate.*—In addition to the showing required under rule 2 hereof, applicants who seek approval of a transfer of operating rights for a limited period, whether by lease, operating contract, or otherwise, shall show in their application and establish by proof in support thereof the specific period for which such transfer is sought, the consideration for such transfer and the time and method of payment thereof, and that the applicants have agreed in writing that all operating rights involved in the transaction shall revert to the transferor at the expiration of said term, or upon discontinuance of operations thereunder by the transferee at any time prior to the expiration of said term. In any such case of reversion, the transferor shall give immediate notice of that fact to the Commission.

RULE 5. *Orders of Court.*—If any transfer presented to the Commission for approval shall also require the authority or approval of any court, applicants shall file with the Commission a certified copy of the order of the court authorizing the transfer of the operating rights involved, at the time of the filing of the application, or a certified copy of the order of court approving such transfer within 30 days after such transfer has been approved by the Commission.

RULE 6. *Abandoned or inactive operating rights.*—The transfer of any operating right under which operations are not being conducted at the time of the proposed transfer will be approved only upon a showing that the cessation of operations was caused by circumstances over which the holder of such

operating rights had no control, or that the motor carrier operations authorized under the operating rights sought to be transferred are required in the public interest.

RULE 7. *Transfers of rights under intrastate certificates.*—(*a*) A State operating right, as defined in rule 1 (b), shall not be transferred apart from the intrastate certificate upon which it is based, but may be transferred together with such intrastate certificate without application to and prior approval of the Interstate Commerce Commission under these rules and regulations, if the transfer of the latter shall have been approved by the State Commission, Board, or official having jurisdiction, and notification of such approval, accompanied by certified copy thereof, shall have been filed within 30 days of such approval with the Interstate Commerce Commission; and provided further, that after such transfer the operating rights of the transferee will be solely between places within a single State.

(*b*) If, after a transfer from or to the holder of a State-operating right, the operating rights of the transferee will not be solely between places within a single State, the transfer shall not be effective until the transferee has applied for and obtained the Commission's approval of the transfer under these rules and regulations.

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